

concludes that the safety standard in FFDCA section 408(b)(2) or (c), as applicable, is met. Subject to the requirements of FFDCA section 408(e), a temporary tolerance or exemption from a tolerance may be revoked if the experimental permit is revoked, or may be revoked at any time if it develops that the application for a temporary tolerance contains a misstatement of a material fact or that new scientific data or experience with the pesticide chemical indicates that it does not meet the safety standard in FFDCA section 408(b)(2) or (c), as applicable.

(e) Conditions under which a temporary tolerance is established shall include:

(1) A limitation on the amount of the chemical to be used on the designated crops permitted under the experimental permit.

(2) A limitation for the use of the chemical on the designated crops to bona fide experimental use by qualified persons as indicated in the experimental permit.

(3) A requirement that the person or firm which obtains the experimental permit for which the temporary tolerance is established will immediately inform the Environmental Protection Agency of any reports on findings from the experimental use that have a bearing on safety.

(4) A requirement that the person or firm which obtained the experimental permit for which the temporary tolerance is established will keep records of production, distribution, and performance for a period of 2 years and, on request, at any reasonable time, make these records available to any authorized officer or employee of the Environmental Protection Agency.

[70 FR 33362, June 8, 2005]

**§ 180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.**

(a) The Administrator on his/her own initiative may propose the issuance of a regulation modifying or revoking a tolerance for a pesticide chemical residue on raw agricultural commodities or processed foods or modifying or revoking an exemption from tolerance for such residue.

(b) Any person may file with the Administrator a petition proposing the issuance of a regulation modifying or revoking a tolerance or exemption from a tolerance for a pesticide chemical residue. The petition shall furnish reasonable grounds for the action sought. Reasonable grounds shall include an explanation showing wherein the person has a substantial interest in such tolerance or exemption from tolerance and an assertion of facts (supported by data if available) showing that new uses for the pesticide chemical have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the application of the tolerance or exemption from tolerance may justify its modification or revocation. Evidence that a person has registered or has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act will be regarded as evidence that the person has a substantial interest in a tolerance or exemption from the requirement of a tolerance for a pesticide chemical that consists in whole or in part of the pesticide. New data should be furnished in the form specified in §180.7(b) for submitting petitions, as applicable.

(c) The procedures for completing action on an Administrator initiated proposal or a petition shall be those specified in §§ 180.29 and 180.7, as applicable.

[70 FR 33362, June 8, 2005]

**§ 180.33 Fees.**

(a) Each petition for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of \$80,950, plus \$2,025 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a

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fee of \$18,500 plus \$1,225 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of \$14,925.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of \$32,325 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of \$4,600.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of \$16,075, plus \$1,225 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition for revocation of a tolerance shall be accompanied by a fee of \$10,125. Such fee is not required when, in connection with the change sought under this paragraph, a petition is filed for the establishment of new tolerances to take the place of those sought to be revoked and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less \$2,025 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less \$2,025 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, *i.e.*, paragraphs (a) through (f) of this section, without

a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of \$4,050.

(j) The person who files a petition for judicial review of an order under section 408(h) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(k) No fee under this section will be imposed on the Interregional Research Project Number 4 (IR-4 Program).

(l) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted to the Office of Pesticide Programs' Document Processing Desk at the appropriate address as set forth in 40 CFR 150.17(a) or (b). A fee of \$2,025 shall accompany every request for a waiver or refund, as specified in paragraph (m) of this section, except that the fee under this paragraph shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (j) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(m) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to

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the Office of Pesticide Programs' Document Processing Desk at the appropriate address as set forth in 40 CFR 150.17(a) or (b). A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(n) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the FEDERAL REGISTER as a final rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

(o) No fee required by this section shall be levied during the period beginning on October 1, 2003, and ending September 30, 2008.

[68 FR 24371, May 7, 2003, as amended at 69 FR 12544, Mar. 17, 2004; 70 FR 33363, June 8, 2005; 71 FR 35547, June 21, 2006]

**§ 180.34 Tests on the amount of residue remaining.**

(a) Data in a petition on the amount of residue remaining in or on a raw agricultural commodity should establish the residue that may remain when the pesticide chemical is applied according to directions registered under the Federal Insecticide, Fungicide, and Rodenticide Act, or according to directions contained in an application for registration. These data should establish the residues that may remain under conditions most likely to result in high residues on the commodity.

(b) The petition should establish the reliability of the residue data reported in it. Sufficient information should be submitted about the analytical method to permit competent analysts to apply it successfully.

(c) If the pesticide chemical is absorbed into a living plant or animal when applied (is systemic), residue data may be needed on each plant or animal on which a tolerance or exemption is requested.

(d) If the pesticide chemical is not absorbed into the living plant or animal when applied (is not systemic), it may be possible to make a reliable estimate of the residues to be expected on each commodity in a group of related commodities on the basis of less data than would be required for each commodity in the group, considered separately.

(e) Each of the following groups of crops lists raw agricultural commodities that are considered to be related for the purpose of paragraph (d) of this section. Commodities not listed in this paragraph are not considered as related for the purpose of paragraph (d) of this section. This grouping of crops does not affect the certification of usefulness by the Administrator as contemplated by section 408(1) of the act.

- (1) Apples, crabapples, pears, quinces.
- (2) Avocados, papayas.
- (3) Blackberries, boysenberries, dewberries, loganberries, raspberries.
- (4) Blueberries, currants, gooseberries, huckleberries.
- (5) Cherries, plums, prunes.
- (6) Oranges, citrus citron, grapefruit, kumquats, lemons, limes, tangelos, tangerines.
- (7) Mangoes, persimmons.
- (8) Peaches, apricots, nectarines.
- (9) Beans, peas, soybeans (each in dry form).
- (10) Beans, peas, soybeans (each in succulent form).
- (11) Broccoli, brussels sprouts, cauliflower, kohlrabi.
- (12) Cantaloups, honeydew melons, muskmelons, pumpkins, watermelons, winter squash.
- (13) Carrots, garden beets, sugar beets, horseradish, parsnips, radishes, rutabagas, salsify roots, turnips.
- (14) Celery, fennel.
- (15) Cucumbers, summer squash.
- (16) Lettuce, endive (escarole), Chinese cabbage, salsify tops.
- (17) Onions, garlic, leeks, shallots (green, or in dry bulb form).
- (18) Potatoes, Jerusalem-artichokes, sweetpotatoes, yams.